

**Response of the Petitioners to Mass Electric's First Set of Information Requests –
D.T.E. 03-98**

1. Please provide the basis for your statement that a discrepancy exists between the Company purchase price calculation pursuant to D.T.E. 98-89 and D.T.E. 01-25.

The price calculated by Mass Electric using the D.T.E. 98-89 formula yields a different result than the price calculated by Mass Electric using the Mass Electric interpretation of D.T.E. 01-25.

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2. Please provide the basis for your statement that the Company has provided vintage information to other communities.

The Company provided a vintaged-based price for both streetlights and dedicated poles to the City of Haverhill. The Company provided the vintages of the dedicated poles in Quincy to the City of Quincy.

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3. Please provide the basis to support the alleged first fact . . . that most if not all of the private streetlight additions occurred after 1970.

The above comment in the August 14, 2003 letter to Alex Mango from John Shortsleeve was based on the author's general knowledge of the timing of commercial streetlight additions in the Boston Edison streetlight conversions, which had been implemented as of the date of that letter. Based on the information presented by Mass Electric in the Franklin purchase price correspondence, it would appear that the bulk of the commercial streetlight additions in Franklin occurred much later than 1970.

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4. Please provide the assumptions used in the Towns' allocation proposal.

The Towns assumed that 90% of the additions and retirements in the years specified in the proposal related to commercial equipment and 10% to municipal equipment.

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5. Is it the Towns' position that the purchase price may be negotiated?

Yes. Several communities have negotiated purchase prices to date.

Even though there should be a single uniform standard and formula, under the one common state statute, which is applicable to the streetlights of all utilities in all service territories, different facts regarding the street lighting infrastructure in different communities have rightfully given rise to purchase price negotiations. In Natick, for example, the streetlight price was reduced because the Town identified a significant volume of streetlight equipment, and associated book value, which was actually installed in the adjacent town, and was inadvertently assigned to the Natick inventory. In Haverhill, Mass Electric negotiated the purchase price regarding the purchase by the City of Haverhill of 178 dedicated poles and the streetlights on those dedicated poles, because the Company had inadvertently billed S3 streetlights for many years at the S20 rate. In Haverhill, the Company negotiated an agreed upon amount of that over-billing and then incorporated that over-billing credit into the purchase and sale agreement to reduce the price paid by Haverhill for the dedicated poles that were purchased.

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6. Please provide the basis for 90% and 10% assumptions.

The assumption that the lion's share of post-sodium conversion additions in both communities related to non-municipal additions was based on both common sense and a general knowledge of the pace of municipally requested additions in both communities, since the completion of the sodium conversion in both communities.

From a common sense perspective, the Towns' rationale was fairly simple. Since the inventory of fixtures was essentially brand new in both communities at the completion of the sodium conversion, the Towns assumed that the repair-related replacements would be very low in the years closely following the installation of all of those brand new fixtures.

If repair-related replacements of the brand new inventory were very low, that would mean that the municipal additions activity since the sodium conversion would of necessity relate primarily to newly requested municipal additions. At the time that the Towns made the 90% / 10% proposal, the Towns were generally aware of an extremely low pace of municipal requests for new streetlight installations by Mass Electric since the completion of the sodium additions.

The round numbers in the 90% / 10% proposal were based on rough justice assumptions by the Towns that intended to roughly capture additions activity that could be equitably attributed to the Towns since the completion of the sodium conversion.

We frankly expected Mass Electric to make a counter proposal based on a more rigorous quantification of the municipal additions activity since the completion of the sodium conversion in both communities. Mass Electric chose not to respond with any counter proposal or any quantification of the municipal additions activity in either Town since the completion of the sodium conversion. That failure by Mass Electric to respond with any quantification of the municipal additions activity since the completion of the sodium conversion, tended to confirm the Towns' conviction that the municipal additions activity was, in fact, very low.

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7. Please provide a copy of Franklin's policy and procedure for the proposal, construction, and acceptance of new streets within the Town.

Franklin does not have a written policy document regarding the acceptance of streets.

However, the Franklin Town Council has the discretion to accept new streets that are constructed in subdivisions by the developers of those subdivisions. The factors used by the Town Council to decide to accept a new street, or not, include neighborhood service considerations, easement considerations, budget considerations, and general public benefit considerations.

As you should know, the planning regulations contemplate that some subdivision streets will remain in private hands, and consequently, the streetlights on those streets will also remain in private hands. There are many factors that contribute to that regulatory approach. Streetlight considerations are not the driving force behind the Town's regulations regarding acceptance of streets.

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8. Please provide a copy of Swampscott's policy and procedure for the proposal, construction, and acceptance of new streets within the Town.

There is no written policy document governing the acceptance of streets.

The Town of Swampscott through its elected Planning Board, and following the Town Meeting approved Zoning By-laws and Swampscott Subdivision Regulations, requires site plan review on the construction of new streets. The acceptance of new streets, per Article II, Section 2, of the Town's General By-laws, requires petitioners to file a request to accept said street with the Board of Selectmen on or before the first Thursday of November preceding the Annual Town Meeting held in May. Town Meeting approval is then required before said street is accepted. Town meeting approval is discretionary. There is no policy document that describes or constrains that discretion.

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9. Please provide a copy of Franklin's policy and procedure relating to street lighting activity within the Town. Please address the process for new commercial and residential developments and established areas. Describe the process for making changes to existing street lighting and tracking information about such changes within Franklin.

There is no written policy document regarding street lighting activity. However, the following may be informative.

Within Subdivisions

The Planning Board regulations establish standards for the installation of new streetlights in developments. These standards relate to the location, lumen size, and type of lights to be installed. Underground served streetlights are required to be constructed by developers at the developer's expense, using the Mass Electric S3 streetlight tariff. A change from the 4,000 lumen standard contained in these regulations would require a variance from the Planning Board.

Section 300-12 (2) (a) of these regulations states as follows:

"It is the responsibility of the developer of any subdivision within the Town of Franklin to provide for the installation of sodium vapor street lighting within that subdivision in accordance with Massachusetts Electric Company "street lighting – Underground – division of Ownership S-3" standards. . ."

This section of the regulation then describes two circumstances following the installation by the developer of the streetlights. The first is the circumstance in which the Town elects not to accept the responsibility for the S3 streetlight bill, and the developer, or some third party, remains responsible for that bill. The second is the circumstance in which the Town elects to accept the responsibility for the S3 streetlight bill.

The discretion to accept responsibility, or not, for the S3 streetlight bill resides with the Town Council. There is no written policy that describes or constrains that discretion.

Outside Subdivisions

For areas not governed by the Planning Board, there is a standing streetlight committee that makes recommendations to the Town Administrator regarding the need to install new streetlights or upgrade existing streetlights.

The Town Administrator has the discretion to authorize a new streetlight or an upgrade to an existing streetlight. There is no written policy that describes or constrains that discretion.

Tracking

The Town does not have the budget or the support staff to actively audit the maintenance of the existing streetlight inventory by Massachusetts Electric. Of necessity, the Town has been forced to assume that the Mass Electric inventories and billing records are accurate.

The Town is concerned to discover as a result of the due diligence required to prepare for this hearing, that a) Mass Electric is not familiar with the Franklin Planning Board regulations regarding streetlights, and b) has apparently been billing the Town for streetlight service in the various subdivisions at the S20 rather than the S3 rate.

We understand that a similar streetlight over-billing was uncovered in Haverhill, regarding the Company's failure to bill the City of Haverhill for a number of years at the lower S3 public ownership rate. This would imply that this type of streetlight over-billing may be a systemic over-billing problem related to S3 streetlights at the Company, rather than a community specific S3 over-billing problem.

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- 10.** Please provide a copy of Swampscott's policy and procedure relating to street lighting activity within the Town. Please address the process for new commercial and residential developments and established areas. Describe the process for making changes to existing street lighting and tracking information about such changes within Swampscott.

There is no written policy document regarding street lighting activity in Swampscott, however the following may be informative.

Within Subdivisions

Within subdivisions, the subdivision regulations apply. This includes a public meeting of the Planning Board to approve the subdivision. If the streets in the subdivision include streetlights, those lights must be shown on the plan that is approved. There is no distinct process for approving streetlights in subdivisions.

Outside of Subdivisions

The Town of Swampscott requires that prior to the addition of any new streetlight or modification to any existing streetlight, the Board of Selectmen must hold a public hearing. Any private party interested in making such a request must submit the request in writing, which includes the signature of abutters, to the Board of Selectmen. The Selectmen then must post for fourteen days, and advertise in a newspaper of general circulation, a notice identifying the time and place of the hearing. In addition, an abutter's list is generated and each abutter is sent a notice of the hearing. At the public hearing, the Board of Selectmen can, by majority vote, approve the addition or modification request. There is no policy document that describes or constrains the discretion of the Selectmen to approve or reject a new streetlight.

Tracking

Board of Selectmen meeting minutes are used to track the actions of the Board in regards to streetlight additions and modifications.

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- 11.** Is it the Town's position that the purchase prices for streetlights should be calculated in the same manner and using the same methodology for all towns . . .

Yes. That is the reason we do not think there should be a unique standard available only to Mass Electric. Mass Electric is proposing to arbitrarily inflate the purchase price by using only post-1963 retirement data that excludes the price reducing impact of pre-1963 retirements of over depreciated incandescent fixtures, and excludes the price reducing impact of pre-1963 retirements of over depreciated brackets. No other utility in the state has requested or secured Department approval of such an obviously unfair and one-sided formula. In light of the Company's focus on one single statewide standard, we do not understand the Company's insistence on this unique argument of Mass Electric to use partial and biased retirement data.

If Boston Edison had been allowed to count only the post-1963 retirements of mercury and sodium fixtures, to the exclusion of the pre-1963 retirements of incandescent fixtures and brackets, then the sale price of the streetlights in Framingham, Natick, Westwood, Boston, Waltham, Arlington, Winchester, Stoneham, Bedford, Burlington, Chelsea, Brookline, just to name a partial list of communities, would have increased.

Four of those above listed communities filed petitions for dispute resolution when Boston Edison refused to honor the streetlight purchase prices that had been prepared using the D.T.E. 98-89 formula, until the decision in D.T.E. 01-25 was issued. Following the decision in D.T.E. 01-25, Boston Edison interpreted that ruling as confirming D.T.E. 98-89, and confirming the formula used by the Company to calculate purchase prices, pursuant to that earlier ruling. The purchase prices prepared by Boston Edison for Framingham, Natick, Westwood, Boston, Waltham, Watertown, Burlington, Chelsea Winchester, and Brookline, which were calculated after the ruling in D.T.E. 01-25, complied with both of those rulings, and yielded a single price that complied with both of those rulings.

Mass Electric is proposing a new and novel formula, that yields two distinct book values, one book value that complies with D.T.E. 98-89, and a higher book value that complies with Mass Electric's novel interpretation of D.T.E. 01-25. In light of the Company's insistence on one single statewide standard, we do not understand the Company's argument that this new, unique approach should apparently apply to Mass Electric only. We do not agree with the Company's insistence that D.T.E. 01-25 essentially overruled D.T.E. 98-89. We do not understand the Company's unique insistence that these two rulings yield two different book value calculations, one book value for the purpose of a sale, and a different book value for the purpose of paying personal property taxes. Mass Electric is proposing a unique interpretation of D.T.E. 01-25 that yields a unique over-priced result in the Mass Electric service territory.

Finally, we would make the following observation regarding all ten of the above referenced post-D.T.E. 01-25 streetlight purchases. After Boston Edison prepared a single purchase price that complied with both D.T.E. 98-89 and D.T.E. 01-25, all ten of those purchase prices were negotiated down, based on community specific facts, regarding those ten community specific inventories. The standard was not negotiated. The price was negotiated based on the unique facts regarding the unique inventories in those ten unique communities. This included negotiation regarding the allocation of value between municipal and private streetlight plant in at least three of those ten communities.

It now appears that the same over-billing that occurred in Haverhill has occurred in Franklin, and should have been the basis of a purchase price negotiation, of the same sort that occurred in Haverhill. Certainly the allocation question that gave rise to negotiations in the BECO streetlight conversions is present in both Franklin and Swampscott, and should have given rise to price negotiations in these two Towns.

The Company's policy that the data provided is beyond reproach and the price is a "take it or leave it" proposition, tends to promote the use of the dispute resolution remedy.

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- 12.** Will the Town of Franklin purchase the streetlights at the purchase price provided by the Company if the Department finds that the Company's methodology for calculating the purchase price is correct?

The Town will review the ruling of the Department and take whatever action it deems appropriate at the time of that ruling.

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- 13.** Will the Town of Swampscott purchase the streetlights at the purchase price provided by the Company if the Department finds that the Company's methodology for calculating the purchase price is correct?

The Town will review the ruling of the Department and take whatever action it deems appropriate at the time of that ruling.

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- 14.** Please provide a complete list of witnesses, exhibits and subject matter of the testimony.

We are still in the process of finalizing our witness list, exhibit list, and evidence. To do so, we need to review Mass Electric's responses to our information requests, which are not due until 5PM this afternoon. Also, the February vacation week has delayed our finalization of this material. At this juncture, we can provide the following incomplete list of potential witnesses:

Witness: Mr. Andrew Maylor, Swampscott Town Administrator

Object of testimony: Describe the due diligence undertaken by the Town to review Mass Electric purchase price.

Exhibits: The list of exhibits is still in development.

Witness: Mr. Bill Fitzgerald, Franklin Director of Public Works

Object of testimony: Describe the due diligence undertaken by the Town to review Mass Electric purchase price.

Exhibits: The list of exhibits is still in development.

Witness: Mr. David Moody, VP, Stone and Webster Management Consultants, Inc.

Object of testimony: Describe the due diligence undertaken by Stone and Webster to review the Mass Electric purchase price.

Exhibits: The list of exhibits is still in development.

We are still considering what support may be needed at the hearing from others familiar with the streetlights in these two towns and the issues in this dispute. We reserve the right to add additional witnesses to this list. We would be willing to exchange an updated witness list and exhibit list, and to the extent available, pre-filed testimony, on February 23, if the Company would like. At least with respect to the exhibit list, we understand that the Department has requested the filing of that exhibit list prior to the start of the hearing. Please advise whether the Company would like to exchange the information proposed in this response on February 23.

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